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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/590,329      | 08/23/2006  | William C. Crutcher  | W-PCT-US            | 8339             |

28145 7590 11/26/2008  
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| EXAMINER |
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COOLMAN, VAUGHN

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| ART UNIT | PAPER NUMBER |
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3618

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11/26/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/590,329 | <b>Applicant(s)</b><br>CRUTCHER, WILLIAM C. |  |
|                              | <b>Examiner</b><br>VAUGHN T. COOLMAN | <b>Art Unit</b><br>3618                     |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,3 and 5-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3 and 5-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/05/2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 8, 2, 3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eriksson (U.S. Patent No. 3,594,932) in view of Pipkin (U.S. Patent No. 2,930,152).**

**[claim 8]** Eriksson discloses a convertible barrow comprising a body (10) having a substantially flat platform arranged to rest flat on the ground (FIG 1), the platform having a toe end and a heel end and arranged to receive a load at the toe end from substantially ground level, opposed side walls, and a rear wall extending upwardly from the heel end of the flat platform, a handle (18) attached to the body and extending upwardly and rearwardly from the body and arranged such that a user may tilt the body on either the toe end or the heel end of the platform, a wheel carriage having at least two spaced wheels (52) rotatably mounted on a cross member

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(50), a pair of wheel pivot arms (20) each pivotably connected to the cross member at one end thereof and pivotably connected to the opposed side walls at first pivot points (14) at the other end thereof and spaced apart by a width greater than the width of the platform, the barrow carriage being pivotable about said first pivot points from a first position where the wheels and barrow platform are both resting on the ground and said cross member contacts said rear support section so as to support the barrow on said rear wall when the handle is depressed so as to elevate the platform above the ground (FIG 2), through a second position in which said cross member closely passes the heel end of the platform (between the first and third positions shown in FIG 3) to a third position (FIG 4) in which said cross member contacts the middle of said platform so as to support the load when the platform is between the wheels and level above the ground, said first pivot points on the body being located substantially equidistant from the carriage cross member in each of the first, second, and third positions.

Eriksson does not disclose a gate for retaining the load when the platform is tilted. Pipkin teaches a barrow including a gate (70) for retaining a load (column 2, lines 48-50) when the barrow is tilted. Although not explicitly disclosed by Pipkin in writing, it is clear from the drawings that the gate would function to retain the load as the body is tilted on the toe end of the platform enough to allow said cross member to pivot from said first position to said third position. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus shown by Eriksson with the gate of Hall or Pipkin in order to provide the advantage of securing the load while traversing rough ground from one point to the next.

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Eriksson does not explicitly disclose the rear wall being inclined rearwardly from the heel end of the platform to define a rear support section, however, he does state that item 10 is “a plow shaped as a container”. Pipkin (FIGS 1-3) teaches a container having a shape that includes a rear wall being inclined rearwardly from the heel end of the platform to define a rear support section. Examiner has attached a marked up copy (labeled ‘Exhibit A’) of FIG 6 of Eriksson showing the type of containers taught by Hall and Pipkin in combination with the structure of Eriksson. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus shown by Eriksson with the container shape as taught by Hall or Pipkin in order to provide the advantage of greater cargo capacity as shown in the marked up copy provided.

**[claim 2]** Pipkin also shows the rear wall being inclined so as to form an included angle with said platform about said heel end on the order of 120 degrees.

**[claim 3]** Examiner notes that locating the pivot points longitudinally along the distance between the heel end and toe end of the platform, specifically being located along a vertical line drawn from a point on the platform that is one quarter of the distance from the heel end to the toe end, would have been obvious to one of ordinary skill and creativity in the art at the time the invention was made in the manner of discovering the optimum value of a result-effective variable such as stability of the barrow. Depending on the height of the body, the length of the handle, the size of the wheels, the length of the wheel pivot arms, the location of the cross member on the pivot arms, one of ordinary skill in the art at the time the invention was made would easily be able to determine a proper location for the pivot points. Furthermore, the

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claimed location of the pivot points is simply one of a number of finite solutions that is entirely dependent upon the obvious factors outlined above.

**[claim 5]** Eriksson in view of Pipkin discloses all of the elements of the claimed invention as described above except for the opposed sidewalls defining bosses with holes coaxial to the second pivot points. Pipkin does teach the closure member pivot arms terminating in pins (76, 78) disposed in holes coaxial with the second pivot points. Examiner notes that it is old and well known and would have been obvious to a worker of ordinary skill in the art to provide reinforcement in the form of bosses for the holes having the pivot arm pins disposed therein in order to prevent excessive wear on the holes from the weight and action of the gate assembly.

**[claim 6]** Pipkin further teaches the pivot arms being flexible in a lateral direction to permit said pins to be withdrawn from said holes so as to allow the closure member to be detached from the barrow (Column 2, lines 61-63).

**Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eriksson in view of Pipkin and further in view of Zamaria (U.S. Patent No. 5,123,187).**

**[claim 7]** Eriksson in view of Pipkin discloses all of the elements of the claimed invention as described above except for a latching mechanism to hold said gate temporarily in an open position. Zamaria teaches a convertible barrow having a gate including a latching mechanism 15, 21, 23, 27 to hold said gate temporarily in an open position (Column 3, lines 33-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the barrow shown by Eriksson as modified by Pipkin with the latching mechanism as taught by Zamaria, since such a modification would provide the advantage of

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holding the gate back from the toe end so that a broom or rake can be used more effectively to load debris from the ground into the barrow.

### ***Response to Arguments***

Applicant's arguments filed 11/05/2008 have been fully considered but they are not persuasive.

To begin, Examiner disagrees with applicant's statement that "the second limitation more clearly defines structure that enables the cross member to balance and support a load". Clearly it is the user of the cart that enables the cross member to balance the load, regardless of its location. Furthermore, balancing of the load by the cross member is not being claimed by applicant, simply support, which is shown by applicant in the modified Eriksson figure labeled Exhibit B.

Second, the matter of quibbling with words – the word "middle" is defined by Merriam-Webster 11<sup>th</sup> Edition as "a middle part, point, or position" or "something intermediate between extremes". The middle of the platform is reasonably interpreted by the Examiner to mean the part or position between the two sidewalls, which the cross member of Eriksson surely contacts. Even for the sake of argument, taking the middle part to be between the heel end and the toe end of the platform, the middle part does not necessarily need to be "halfway between" said ends, simply between. Eriksson meets this broad claim limitation fully. The weight of the load is irrelevant to whether the cross member contacts the middle of the platform, and Eriksson states that the cart can be used to transport items such as "leaves and other light things". The user should not have any problem in that instance.

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Applicant has misinterpreted Examiner's Exhibit A in stating that the “pivot points of the wheel carriage arms have then been relocated”. A semi-circle was drawn using the Eriksson pivot point as the center and the furthest extremity of the cross member as the radius. It is also unclear what respect the Eriksson reference has been mischaracterized. The Eriksson apparatus alone is able to travel with the platform parallel to the ground regardless of the shape of the container.

Regarding the arguments against Pipkin, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Specifically, the teachings of Pipkin are for the shape of a container - not the container's interaction with the wheels, and the gate for the container and the gate's ability to hold the load in the container – not the tilting of a wheeled container for transport. The teachings of Pipkin stand alone and do not need the handle or wheels in order to modify the base Eriksson reference. Furthermore, if the shovel of Pipkin is used as a shovel, then the gate is closed, then the wheels are deployed in order to transport the load, did not the gate retain the load during the operation as claimed by applicant? As such, the purpose of Pipkin's gate is not different from that of the applicant.

Regarding applicant's argument of a “new and improved result” strictly due to the longitudinal location of the pivot points, applicant is selling Mr. phosita short in his level of skill. Depending on the size and shape of the container, as outlined in the above rejection, and the angle and length of the handle, as well as the height and arm length of the user, the claimed location is indeed one of the finite solutions to a problem wherein the longitudinal location is a



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result-effective variable when the remaining variables are fixed (such as the diameter of the cross member, the length of the wheel carriage legs, the vertical location of the pivot point with respect to the platform). As such, Examiner stands by the rejection as proper.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAUGHN T. COOLMAN whose telephone number is (571)272-6014. The examiner can normally be reached on Monday thru Friday, 8am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher P Ellis/  
Supervisory Patent Examiner, Art Unit 3618

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